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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1926.

JOHN JAMES JACKSON, *et al.*,

Petitioners,

—against—

STEAMSHIP "ARCHIMEDES", LAMPORT & HOLT LINE, LTD. (Claimant),

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOHN W. DAVIS,
SILAS BLAKE AXTELL,
Attorneys for Petitioners.

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To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

John James Jackson, William A. Wilson, Christopher R. Shotton, William Lewis and Thomas W. Hooper, respectfully pray for a Writ of Certiorari to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, in the above-entitled case.

Statement of the Case.

This was a libel by the five petitioners, British seamen, who joined the British Steamship *Archimedes*, May 19, 1922, at Manchester, England, for a round voyage to the United States. At the time they shipped, each of them

received an advance on account of wages varying from £2 to £4, in the form of a negotiable note. Such advances were sanctioned by British law. The vessel arrived in New York on June 1, 1922. On June 3, 1922, each of them received from the Master about $5 or $6. On June 8, 1922, they made a formal demand upon the Master for one-half the wages then earned and unpaid at that time. No wages were due if the petitioners were legally chargeable here with the advances received in England. Their demand was refused, they left the ship, and filed this libel June 9, 1922, in the District Court for the Southern District of New York. The claim in the libel was for full wages earned and due at the time of the demand, advances in England disregarded, together with waiting time under Revised Statutes, Section 4529. The contention that the advances should be disregarded was based upon Section 34 of the Jones Act of June 5, 1920 (41 Stat. 1007), amending the Seamen's Act of March 4, 1915 (38 Stat. 1168). The 1915 Act was amended in 1920 by the addition of the words appearing in italics in the quotation set forth below:

> "(a) It shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months at the discretion of the court.

The payment of such advance wages or allotment, *whether made within or without the United States or territory subject to the jurisdiction thereof,* shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive either directly or indirectly, from any seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500."

* * * * * * * *

"(e) This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

The master, owner, consignee or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with" (41 Stat. 1007).

The respondents contended that the Statute did not make the advances illegal; that, being valid, nothing was due the seamen, and further that the demand of the peti-

tioners was not made in good faith but only to provoke an occasion for deserting the ship.

The District Judge dismissed the libel without passing upon the question of good faith upon the ground that the advances were valid (10 Fed. (2nd) 234). The Circuit Court of Appeals affirmed this decision upon the opinion of the District Judge (11 Fed. (2nd) 1000), decided May 3, 1926, mandate issued May 19, 1926.

It is conceded that under the Act of 1915, prior to the amendment of 1920, this Court decided by a five to four division that advances made under the circumstances of this case were not invalid, *The Talus,* 248 U. S. 185.

Question Presented.

The question presented is whether the amendment of 1920 by the addition of the italicized words heretofore quoted, changed the law so as to render invalid advances made abroad by foreign ships when demand is made in this country for half wages under Revised Statutes, Section 4530.

Reasons for the Petition.

The reasons for which this petition is presented are that the Circuit Court of Appeals has decided "an important question of Federal law which has not been, but should be, settled by this Court", and has decided "a Federal question in a way probably in conflict with applicable decisions of this Court" (Rule 35).

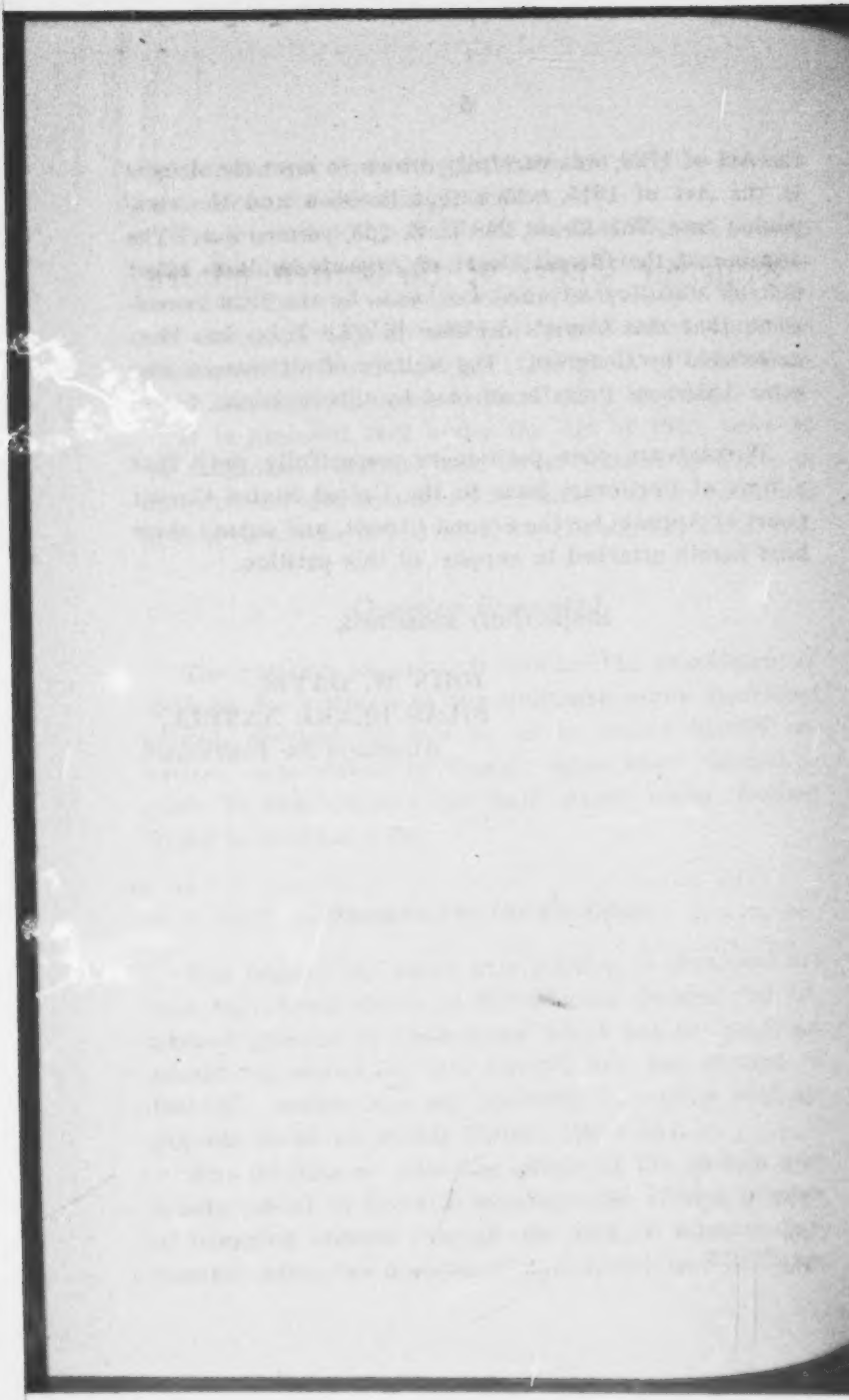
The decision nullifies the efforts of the seamen over a long period of years to eliminate the vicious practice of engaging seamen through the lure of advance payments. After the decision of this Court in *The Talus,*

the Act of 1920, was carefully drawn to meet the defects in the Act of 1915, which that decision and the companion case, *The Rhine,* 248 U. S. 205, pointed out. The decision of the Circuit Court of Appeals holds in effect that no statutory advance was made by the 1920 amendment, that this Court's decision in *The Talus* has been unchanged by Congress. The welfare of all seamen who enter American Ports is affected by this decision.

WHEREFORE, your petitioners respectfully pray that a Writ of Certiorari issue to the United States Circuit Court of Appeals for the Second Circuit, and submit their brief hereto attached in support of this petition.

Respectfully submitted,

JOHN W. DAVIS,
SILAS BLAKE AXTELL,
Attorneys for Petitioners.



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BRIEF IN SUPPORT.

POINT I.

The Jones Act amended the Seamen's Act so as to render invalid advances made to seamen under the circumstances of this case.

The Seamen's Act of March 4, 1915, 38 Stat. 1168, was a comprehensive statute designed to promote safety at sea, to improve the conditions of seamen, and more effectively to eliminate the ancient practice of hiring seamen through advances. The viciousness of this practice has been noted in no uncertain terms by the Courts. *The Windrush,* 250 Fed. 180, 182 (2d C. C. A.); *Patterson* v. *Bark Eudora,* 190 U. S. 169, 175. Section 11 of that statute was thought to have been so worded as to

make invalid advances made abroad by foreign ships, when demand was made in this country for half wages as in this case. However, in *The Talus* (*Sandberg* v. *McDonald*), 248 U. S. 185, this Court decided by a five to four division that the Statute did not cover such advances, and invited amendment to the Statute if a further extension of its provision were desired. That case arose on facts like the present, *i. e.*, advances made in a foreign port by a foreign ship. On the day *The Talus* was decided, *The Rhine*, 248 U. S. 205, was decided by the same five to four division.

In *The Rhine* the question was whether advances made in Buenos Aires by the American Master of an American ship were invalid under the provisions of the Act of 1915. The majority held that the Act of 1915 did not cover such advances. These decisions were rendered in December, 1918. Promptly, thereafter and in response to the express invitation of the majority opinion in *The Talus*, the Senate Committee on Commerce, to which the Merchant Marine (Jones) Act was referred, inserted the amendment which added the italicized words. The italicized words are effective to make the advances here involved invalid when a demand for half wages is made in this country.

The District Court concluded that the addition of the italicized words was made only to meet the decision in *The Rhine*, *i. e.*, to make the Act apply to advances made by American ships in foreign ports, but that the amendment did not reach the situation presented by *The Talus*, and hence held the advances valid. The chief basis for this conclusion was that there had been no alteration in the language of paragraph (e) of Section 11 of the Act of 1915; that this section had been relied upon in the

majority opinion in *The Talus* as evidencing an intention on the part of Congress not to affect advances made in foreign ports by foreign ships, and that in the absence of any alteration of this language the amendment could not be said to have changed the result of *The Talus*.

Section 34 of the Act of 1920 containing this amendment was before the Senate on May 14, 1920, at which time Senator Jones, Chairman of the Committee on Commerce, and in charge of the Bill stated the object of the amendment (§34 of the Bill containing the amendment having been read, the following discussion ensued):

> "*Mr. King*: I should like to ask the Senator having this Bill in charge what is the necessity now of re-enacting legislation dealing with this subject?
>
> *Mr. Jones*, of Washington: I will call the Senator's attention to the only change made in the law by this provision. He will note on page 51 in lines 5 and 6 the words:
>
> The payment of such advance wages or allotment—here is the change in existing law:
>
> whether made within or without the United States or territory subject to the jurisdiction thereof.
>
> The Supreme Court has upheld this section and has also upheld the right of Congress to deal with foreign seamen in our ports. The purpose of the provision is to prevent what is called 'crimping' in the securing of seamen. For instance, we prevent by our law advances being made to seamen and sailors in this country. That was simply to prevent the boarding houses or the crimping houses from taking advantage of seamen, as the Senator understands. *The purpose of this section is to*

prevent that as to sailors or ships coming from a foreign port to this country. It is a very common custom in many other countries to require advance payments or wages when seamen ship. Under this provision that practice will be stopped. That is the sole purpose of the proposed change. (Italics ours.)

The Presiding Officer: The question is on agreeing to the amendment reported by the Committee.

The amendment was agreed to."

(59 Congressional Record, Part 7, page 7043—66th Congress, Second Session.)

The above statement by Senator Jones makes it clear that the situation involved in *The Talus* and in the present case was distinctly in the minds of the members of Congress when this amendment was proposed and agreed to. While he does not refer specifically to foreign vessels, no one can read this statement without being convinced that he was referring alike to foreign vessels and to ships of the United States.

It would seem to be an extraordinary conclusion that in the Act of 1920 Congress singled out for legislative change one decision of this Court and ignored another, decided the same day, by the same division, when both of them affected adversely and in a similar manner the cause of seamen's welfare. If the language is consonant with the purpose, it would seem plain that Congress was meeting both decisions of this Court unless there were clear reasons for differentiating between them.

But instead of there being reasons for differentiating, there were strong reasons for treating both decisions

alike. In the present case the result of a holding that the 1920 amendment affected *The Rhine* only and not *The Talus* produces a discrimination against American ships, which is clearly out of line with the familiar Congressional purpose of encouraging American shipping and putting it in all respects on an equal footing with foreign shipping. *Patterson* v. *Bark Eudora*, 190 U. S. 169, 179; *The State of Maine*, 22 Fed. 734, 736; *The Windrush*, 250 Fed. 180. 183.

District Judge Hand's decision means that American ships in engaging seamen in foreign ports will be at a disadvantage because unable lawfully to make advances which foreign ships in competition with them are free to make.

When *The Rhine* was before this Court the argument was made that even if advances made by foreign ships as in *The Talus* were not reached by the Act, the Act at least reached advances made by American ships in foreign ports. The Court was invited to distinguish the two situations. To this Mr. Justice Day replied (248 U. S. at 213):

> "But we are unable to discover that in passing this statute Congress intended to place American ships at the great disadvantage of this inability to obtain seamen when compared with the vessels of other nations which are manned by complying with local usage."

Judge Hand's decision discovers that in 1920, with this plain statement before it, Congress did intend to place American shipping at a great disadvantage when it added the italicized words to paragraph (a). Whereas in 1918 this Court was moved to decide both cases in

the same way, Judge Hand concludes that in 1920 Congress proposed to distinguish them, and in a manner that seriously prejudices American shipping.

He reaches this conclusion by the negative reasoning that this intention is discovered in the failure to change the language of paragraph (e). It is submitted that such intention is entirely out of harmony with the traditional Congressional attitude toward American shipping, particularly prominent in 1920 when every effort was being made to preserve the war-created Merchant Marine as a permanent body of American shipping, and is not lightly to be found through such negative reasoning.

Paragraph (e) retained a significance in its unaltered form which might have been lost had it been changed. Under the Act of 1915 this paragraph obviously applied to the penal provisions in paragraph (a), making any person guilty of paying an advance on account of wages to a seaman guilty of a misdemeanor, punishable by a fine of from $25 to $100 and imprisonment up to six months. The same paragraph made it a misdemeanor for a person to demand or receive remuneration from a seaman for providing him with employment and this was punishable by a fine up to $500 or imprisonment up to six months.

It is clear that these provisions could not reach acts done abroad, but that they could reach acts done on foreign vessels while in waters of the United States. *Schooner Exchange* v. *McFadden*, 7 Cranch 116, 136, 146; *Wildenhus'* case, 120 U. S. 1, 11; *Patterson* v. *Bark Eudora*, 190 U. S. 169, 173, 178. But in order that it might be clear that these penal sections covered acts done on foreign ships while in ports of the United States, paragraph (e) was inserted. These provisions remained unchanged when the amendment of 1920 was

adopted and, of course, paragraph (e) likewise remained unchanged. To conclude from this that Congress intended to handicap American shipping in the way in which this decision discovers that it did is to lose sight entirely of the real purpose and effect of paragraph (e).

The provisions of paragraph (e) were before and remain effective to render the Master liable in American courts for fine or imprisonment if he makes such advances while within the jurisdiction of the United States. It was important to the effectiveness of the Act that paragraph (e) remain unchanged in order that the penal provisions be clearly understood by foreign shipping. In leaving them unchanged, there is no suggestion of a diminished effect to be given the italicized words in paragraph (a) and it is improper to ascribe such diminished effect to them.

POINT II.

No constitutional or jurisdictional difficulty arises from making the amendment of 1920 apply to advances made abroad by foreign ships.

The suggestion has been made by learned counsel for the British Embassy appearing by leave of the Court in both arguments below that to read the Act of 1920 so as to cover advances made abroad by foreign ships renders the Statute beyond the legislative power of Congress and indeed beyond the jurisdiction of the United States. If any doubt may have been entertained on this point, it has, we think, been put at rest by the decision of this Court in *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348. There the question was whether under Section 4 of the

Seamen's Act (38 Stat. 1165) a contract for wages made abroad between a British seaman and a British ship could be so far nullified by an Act of Congress as to permit the seaman when in a port of the United States to demand one-half earned and unpaid wages under Revised Statutes, Section 4530, although under his contract it was clear that he was not entitled to be paid at that time. The same learned counsel appeared by leave of the Court in that case and made substantially the same argument there as they make now. The Court decided that in legislating in respect of seamen on ships in ports of the United States, Congress was supreme and could impose requirements which had the effect of altering or annulling contracts made abroad which were valid when made.

It is clear that if Congress, when dealing with seamen in American ports, may legislate in such manner as to interfere with contract rights secured abroad, with equal power it may provide that advances made abroad are to be disregarded when computing wages due in response to demands made in this country. *Patterson* v. *Bark Eudora,* 190 U. S. 169, 178; *Cunard S. S. Co.* v. *Mellon,* 262 U. S. 100, 125. It is significant that in the brief submitted in the District Court by counsel for the British Embassy the case of *Strathearn* v. *Dillon,* is not referred to.

To the same effect in his brief before the District Court, counsel for the respondents contended that if the 1920 amendment were held to cover advances made abroad by foreign ships a grave doubt would arise as to its validity and he referred to a statement in the opinion of the Circuit Court of Appeals for the 5th Circuit when

The Talus was in that Court, 248 Fed. 670, 674. That Court said:

> "If this section of the act applies to advances made by a master, owner, or agent of the foreign ship in a foreign port, its effect would be to render such master, owner or agent guilty of a misdemeanor and subject him to prosecution and punishment if found in this country for an act done without the jurisdiction of this country, and which was an unlawful act where done. The competency of Congress to so enact is of such grave doubt that a court would not construe the language of an act to that effect, unless forced so to do."

It is to be noted that the doubt of the power of Congress suggested by the Court here was addressed to the suggestion that the foreign master could be indicted in this country for the act which he had done abroad. We agree with Judge Hough in *The Windrush*, 250 Fed. 180, 183, when he said that it would be absurd to suggest that the Master would be indictble, but it is one thing to doubt the power of Congress to describe an act done abroad as a misdemeanor and to attempt to make it the subject of indictment in this country, and a very different thing to doubt the power to declare that acts done abroad must be disregarded when calculations are involved in this country over which Congress has plenary power to prescribe terms and requirements. Whatever doubt this second proposition may involve was forcibly and clearly set aside by the decision in *Strathearn S. S. Co.* v. *Dillon.*

We concur with counsel for the appellee and with counsel for the British Embassy that acts of Congress are normally to be construed as not affecting the extra-

territorial acts unless the language is plainly directed to that end. These considerations prevailed when the Act of 1915 was before the Supreme Court in *The Talus* and in *The Rhine*. They prevailed, however, by the narrow margin of a five to four division. They prevailed because in the language of the majority opinion, the Court could not discover an intention on the part of Congress to reach such advances, and declined to imply such intention in the face of the usual rule. All need for implication or for resort to the usual rule has been eliminated by the plain statement embodied in the amendment of 1920 that the section is to apply to advances wherever made. In the face of this language this argument advanced by counsel for the appellee and for the British Embassy has no application.

CONCLUSION.

It is respectfully submitted that the decision of the Circuit Court of Appeals fails to give proper effect to the acts of Congress involved herein, and therefore your petitioners respectfully pray that a Writ of Certiorari issue to enable this Court to review the decision of the Circuit Court of Appeals.

Respectfully submitted,

JOHN W. DAVIS,
SILAS BLAKE AXTELL,
Attorneys for Petitioners.